



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

HAROLD SMITH,
Petitioner,

vs.

EDWARD F. REILLY, JR. et al.,
Respondents.

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CIVIL ACTION NO. 6:05-3426-HFF-WMC

ORDER ADOPTING THE REPORT AND RECOMMENDATION OF THE MAGISTRATE
JUDGE AND DISMISSING THE ACTION *WITHOUT PREJUDICE* AND WITHOUT
REQUIRING RESPONDENTS TO FILE AN ANSWER

This action was filed as a Section 2241 action. Petitioner is proceeding *pro se*. The matter is before the Court for review of the report and recommendation (Report) of the United States Magistrate Judge in which he suggests that this action be dismissed *without prejudice* and without requiring Respondents to file an answer. The Report is made in accordance with 28 U.S.C. § 636 and Local Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Matthews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a *de novo* determination of those portions of the report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Report on December 16, 2005, and Petitioner filed his twenty-eight (28) page objection memorandum, along with exhibits, on January 5, 2006. In Petitioner's objections, he generally reargues the same points that were already considered and rejected by the Magistrate Judge. Nevertheless, in the interest of justice, as well as an abundance of caution, the Court has made a *de novo* review of the entire Report and record in this case, but finds Petitioner's contentions to be wholly without merit. Therefore, in lieu of addressing each of Petitioner's arguments a second time here, the Court will incorporate the Magistrate Judge's comprehensive and well-reasoned Report herein.

After a thorough review of the Report and the record in this case pursuant to the standards set forth above, the Court overrules Petitioner's objections, adopts the Report and incorporates it herein. Therefore, it is the judgment of this Court that this action must be **DISMISSED** *without prejudice* and without requiring Respondents to file an answer.

Also pending before the Court are Petitioner's Motion to Appoint Counsel and for Leave to Proceed *in forma pauperis*. In light of the fact that Petitioner has failed to establish that there are any exceptional circumstances present here, his motion to Appoint Counsel must be **DENIED**. Moreover, in light of the Court's decision to dismiss the action, Petitioner's Motion for Leave to Proceed *in forma pauperis* is rendered **MOOT**.

IT IS SO ORDERED.

Signed this 6th day of January, 2006, in Spartanburg, South Carolina.

s/ Henry F. Floyd
HENRY F. FLOYD
UNITED STATES DISTRICT JUDGE

NOTICE OF RIGHT TO APPEAL

Petitioner is hereby notified that he has the right to appeal this Order within sixty (60) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.